

Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: Takasugi Analyst: Marion Mann DeJong Bill Number: AB 821
Related Bills: _____ Telephone: (916) 845-6979 Amended Date: 06/24/98
Attorney: Doug Bramhall Sponsor: _____

SUBJECT: BOE Taxpayers' Bill of Rights

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

Under the Government Code, this bill would provide that payments, applications, tax returns or claims for credit or refund sent through a "bona fide commercial delivery service" would be deemed as timely made or filed if sent before the specified due date.

This bill also would expand taxpayers' rights with respect to state taxes administered by the Board of Equalization (BOE). These provisions are not discussed in this analysis, as they do not impact the programs administered by the Franchise Tax Board (FTB).

SUMMARY OF AMENDMENT

The June 24, 1998, amendments deleted the provisions of the bill as introduced and replaced them with provisions relating to delivery services and taxpayers' rights for programs administered by the BOE.

EFFECTIVE DATE

This bill would become effective on January 1, 1999.

LEGISLATIVE HISTORY

In 1988, Congress enacted a Taxpayers' Bill of Rights (TBR) for laws administered by the Internal Revenue Service (IRS). Using the proposed federal TBR as a springboard, California enacted a Taxpayers' Bill of Rights for laws administered by FTB and BOE, generally effective January 1, 1989. Subsequently, the Employment Development Department TBR was enacted.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Ralph Shoemaker

7/21/98

On July 30, 1996, Congress enacted TBR 2 to provide for increased protections of taxpayer rights in complying with the Internal Revenue Code (IRC) and in dealing with the IRS in its administration of the tax laws. AB 713 (Stats. 1997, Ch. 600) conformed the laws administered by the FTB to the federal provisions as appropriate.

SPECIFIC FINDINGS

Under federal law, a return, claim, statement, document or payment that must be filed or made by a certain date generally is considered timely filed or made if it has a timely postmark. For the timely mailing rule to apply, the item must be (1) deposited in the mail in the United States (U.S.) in a properly addressed envelope or wrapper with sufficient postage; (2) postmarked on or before the prescribed filing or payment date; and (3) actually delivered by U.S. mail to the proper place.

Under federal TBR 2 (Section 1210), the IRS is required to treat items delivered by a designated delivery service as though they were mailed with the U.S. postal service. For purposes of administering the tax laws, items recorded or marked with a date by a designated delivery service are treated as being postmarked by the postal service.

Government Code Sections 11002 and 11003 provide that payments, applications, tax returns or claims for credit or refund required to be made or filed with the state or state agency on or before a specified date are considered timely made or filed if they were sent through the U.S. mail and were properly addressed with postage prepaid. The deemed received date is the date shown by the post office cancellation mark stamped on the envelope or the date the item was mailed if satisfactorily proved that the mailing occurred on an earlier date.

Revenue and Taxation Code Section 21027 provides that items given to designated delivery services on or after January 1, 1998, shall be treated as if they were mailed with the U.S. postal service. The private delivery services are those so designated by the IRS for federal purposes. Thus, the FTB processes mail received from IRS-designated delivery services as though it were mailed with the postal service. The date an item is recorded with the designated delivery service is treated as the postmark.

This bill would amend Government Code Sections 11002 and 11003 to provide that items sent through a "bona fide commercial delivery service," as determined by the state or the state agency addressee, would be deemed as timely made or filed if sent before the specified due date. For this rule to apply, the items must be properly addressed with postage prepaid. The deemed received date would be the date shown by the cancellation mark stamped on the envelope or the date the item was mailed if satisfactorily proved that the mailing occurred on an earlier date. Rules are provided for determining the deemed received time and date an item was mailed if required to be made or filed by a specified time on a specified date.

Implementation Considerations

It is unclear what would happen if the state (or agency) determines a delivery service is "bona fide" when the same delivery service is not an IRS-designated private delivery service, or vice versa.

Technical Considerations

This bill generally expands taxpayers' rights relating to taxes administered by the BOE. However, the provisions relating to private delivery services were placed in the Government Code and thus would apply to all state agencies and not just the BOE. If the bill is intended to impact only the BOE, the amendments should be made in the Revenue and Taxation Code (similar to Section 21027) instead of the Government Code.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

This bill would not impact Personal Income Tax or Bank and Corporation Tax Revenues.

BOARD POSITION

Pending.